



Legislative Department Seattle City Council Memorandum

Date: February 15, 2005

To: Northgate Stakeholders

From: Geri Beardsley and Norm Schwab, Central Staff

Subject: **Quasi-Judicial Limitations on Communication with City Councilmembers
About Lorig's Proposed Contract Rezone/Integrated MUP Application**

Summary: Lorig Associates plans to apply for a contract rezone to change height and parking requirements for its proposed South Lot development. This is a Type IV land use decision that requires review and action by the Seattle City Council. Type IV land use decisions are subject to quasi-judicial rules, which restrict the lobbying of and exchange of information with Councilmembers. In the event Stakeholders want to comment to the Council regarding this proposal, you will be subject to these rules.

The quasi-judicial rules are at odds with the process the Stakeholders have used to both formally and informally communicate advice to the Council about other Northgate issues. To comply with the Council's quasi-judicial rules and state law, the Stakeholders advice on the Lorig rezone/MUP application will have to be sent to the Council in a different manner from your advice on other matters. Comments must be submitted as part of the formal record to be established in the rezone process. A failure to comply with these rules could result in the invalidation of the Council's decision.

The City Council has adopted quasi-judicial rules, which were largely written to help the Council comply with the state Appearance of Fairness statute. These rules apply to Type IV and certain other land use decisions. Unlike other decisions, such as those on policy and budget issues, which the Council makes as a legislative body, Type IV decisions are quasi-judicial. This means that the Council acts more like a judicial body. Just as it is unfair and unlawful for a court to decide a lawsuit based upon arguments and evidence that is hidden from the other side, so too is it unfair and unlawful for the Council to make such a decision. The Council must base its decision on a formal record the City's Hearing Examiner prepares for its review, and to which various parties may respond to the arguments and evidence presented. Councilmembers may not have private discussions about a Type IV land use decision and may not prejudice the rezone.

Here are some things to keep in mind about how to make your views and advice known to Councilmembers in ways that comply with and do not compromise the Council's quasi-judicial rules and the rezone itself.

1. **Key Terms:**

- a. **Proponents and opponents:** State statute and the Council's rules prohibit "ex parte" (outside the formal record) communications between the Council and "opponents or proponents." Because one of the purposes of the Northgate Stakeholders Group is to make recommendations to the Council regarding various matters (for or against), the Stakeholders Group is considered an opponent or proponent, and thus the quasi-judicial rules apply. Others who are not allowed to have ex parte communications with Councilmembers include Lorig Associates, the Executive (Mayor, Office of Policy and Management, Department of Planning and Development (DPD), etc.), adjacent property owners, neighborhood and business groups, and the general public.
- b. **Integrated Rezone/MUP Application:** When a Type IV land use case comes to the Council, the Council considers the entire Master Use Permit Application (MUP). Discretionary aspects of the MUP, which are normally determined administratively, become Council decisions and are therefore subject to the Council's quasi-judicial rules. This includes design review departures from code requirements.
- c. **Pending:** The rules apply when a matter is "pending". A quasi-judicial matter is considered pending before the City Council when a MUP application is filed with DPD. Lorig intends to submit a rezone/MUP application in May 2005. When staff is aware that submittal of an application is imminent, as a precautionary step staff recommends that Councilmembers not have ex parte discussions.

2. **How the Stakeholders May Communicate Their Advice to the Council and Comply with the Quasi-Judicial Rules:** DPD will make a recommendation on the Lorig rezone/MUP application, which will then be reviewed by the City's Hearing Examiner, who then will make a recommendation and establish the formal record for City Council review and action. Stakeholders comments on the merits of the rezone, code departures arising from design review, and other conditions on the contract rezone may be placed in the formal record in the following ways:

- a. **Comment to DPD:** The Stakeholders Group may comment to DPD to inform DPD's analysis and recommendations to the Hearing Examiner on the Lorig rezone/MUP proposal.
- b. **Testimony before the Hearing Examiner:** The Stakeholders Group may become a party of record and comment to the Hearing Examiner during the hearing on the Lorig rezone/MUP proposal.

- c. **Request City Council Further Consideration of Hearing Examiner's Recommendation:** The Stakeholders Group may be able to request "further consideration" of the Hearing Examiner's recommendation by the City Council, subject to important limitations. If permitted, the request for further consideration must identify what objections the Stakeholders have to the Hearing Examiner's recommendation (e.g., what is wrong with the recommendation) and identify the relief sought.

The same is true of member organizations represented on the Stakeholders Group as well as individuals. Communications should be within the process laid out above (2a-2c).

3. What not to do:

- a. **Do not have ex parte communications with Councilmembers.** This includes phone calls, letters, e-mails and in-person conversations. Councilmembers will be advised not to have "off the record" communications about the merits of the Lorig rezone/MUP proposal for the South Lot.
- b. **Do not have ex parte communications with Legislative Assistants.** Councilmembers' personal staffs are considered an extension of Councilmembers so they are not allowed to have ex parte communications with constituents about the merits of the Lorig rezone/MUP proposal for the South Lot.
- c. **Do not blend discussions of legislative and quasi-judicial matters.** Stakeholders may continue to meet with Councilmembers and communicate with them on other Northgate issues. Please note that the Mayor soon will be submitting legislation to the City Council for citywide changes to the Neighborhood Commercial (NC) zones. Although this legislation may affect the Lorig proposal, this legislation is not considered quasi-judicial. Councilmembers have been advised to not allow private communications on Northgate-related legislative matters to venture into the subject of the Lorig rezone/MUP proposal. We recommend that Stakeholders not have ex parte communications with Councilmembers on the merits of the Lorig rezone/MUP proposal for the South Lot when discussing other Northgate legislative issues.

State law and the Council's quasi-judicial rules regarding Type IV land use decisions are intended to maintain the integrity of the rezone process. If proponents or opponents of the Lorig rezone/MUP proposal for the South Lot inadvertently or unavoidably have an ex parte communication with a Councilmember, the ex parte communication may be "cured" by disclosing the date, time, parties, and content of the communication and placing such in the formal record. However, this is undesirable because it would require making an announcement at each meeting where the Council considers the Lorig rezone/MUP proposal and offering an opportunity for the parties to rebut the information. In short, this compromises the rules and process, and risks invalidating the rezone/MUP decision.

In addition, while there is an opportunity to cure ex parte communications, this is not the case with prejudgment. Councilmembers who indicate they have prejudged the outcome of the rezone decision must recuse themselves from voting on the rezone proposal, just as a judge is disqualified if he or she announces a decision in a case before hearing all the evidence.

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